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ENGROSSED SUBSTITUTE SENATE BILL 5055

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State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Children & Family Services & Corrections  
(originally sponsored by Senators Fairley, Esser and Kohl-Welles)

READ FIRST TIME 02/12/03.

1 AN ACT Relating to costs of incarceration; and amending RCW  
2 9.94A.760 and 10.01.160.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.760 and 2003 c 379 s 14 are each amended to read  
5 as follows:

6 (1) Whenever a person is convicted of a felony, the court may order  
7 the payment of a legal financial obligation as part of the sentence.  
8 The court must on either the judgment and sentence or on a subsequent  
9 order to pay, designate the total amount of a legal financial  
10 obligation and segregate this amount among the separate assessments  
11 made for restitution, costs, fines, and other assessments required by  
12 law. On the same order, the court is also to set a sum that the  
13 offender is required to pay on a monthly basis towards satisfying the  
14 legal financial obligation. If the court fails to set the offender  
15 monthly payment amount, the department shall set the amount. Upon  
16 receipt of an offender's monthly payment, restitution shall be paid  
17 prior to any payments of other monetary obligations. After restitution  
18 is satisfied, the county clerk shall distribute the payment

1 proportionally among all other fines, costs, and assessments imposed,  
2 unless otherwise ordered by the court.

3 (2) If the court determines that the offender, at the time of  
4 sentencing, has the means to pay for the cost of incarceration, the  
5 court may require the offender to pay for the cost of incarceration at  
6 a rate of fifty dollars per day of incarceration, if incarcerated in a  
7 prison, or the court may require the offender to pay the actual cost of  
8 incarceration per day of incarceration, if incarcerated in a county  
9 jail. In no case may the court require the offender to pay more than  
10 one hundred dollars per day for the cost of incarceration. Payment of  
11 other court-ordered financial obligations, including all legal  
12 financial obligations and costs of supervision shall take precedence  
13 over the payment of the cost of incarceration ordered by the court.  
14 All funds recovered from offenders for the cost of incarceration in the  
15 county jail shall be remitted to the county and the costs of  
16 incarceration in a prison shall be remitted to the department.

17 (3) The court may add to the judgment and sentence or subsequent  
18 order to pay a statement that a notice of payroll deduction is to be  
19 issued immediately. If the court chooses not to order the immediate  
20 issuance of a notice of payroll deduction at sentencing, the court  
21 shall add to the judgment and sentence or subsequent order to pay a  
22 statement that a notice of payroll deduction may be issued or other  
23 income-withholding action may be taken, without further notice to the  
24 offender if a monthly court-ordered legal financial obligation payment  
25 is not paid when due, and an amount equal to or greater than the amount  
26 payable for one month is owed.

27 If a judgment and sentence or subsequent order to pay does not  
28 include the statement that a notice of payroll deduction may be issued  
29 or other income-withholding action may be taken if a monthly legal  
30 financial obligation payment is past due, the department or the county  
31 clerk may serve a notice on the offender stating such requirements and  
32 authorizations. Service shall be by personal service or any form of  
33 mail requiring a return receipt.

34 (4) Independent of the department or the county clerk, the party or  
35 entity to whom the legal financial obligation is owed shall have the  
36 authority to use any other remedies available to the party or entity to  
37 collect the legal financial obligation. These remedies include  
38 enforcement in the same manner as a judgment in a civil action by the

1 party or entity to whom the legal financial obligation is owed.  
2 Restitution collected through civil enforcement must be paid through  
3 the registry of the court and must be distributed proportionately  
4 according to each victim's loss when there is more than one victim.  
5 The judgment and sentence shall identify the party or entity to whom  
6 restitution is owed so that the state, party, or entity may enforce the  
7 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or  
8 9.94A.753(6) to a victim of rape of a child or a victim's child born  
9 from the rape, the Washington state child support registry shall be  
10 identified as the party to whom payments must be made. Restitution  
11 obligations arising from the rape of a child in the first, second, or  
12 third degree that result in the pregnancy of the victim may be enforced  
13 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).  
14 All other legal financial obligations for an offense committed prior to  
15 July 1, 2000, may be enforced at any time during the ten-year period  
16 following the offender's release from total confinement or within ten  
17 years of entry of the judgment and sentence, whichever period ends  
18 later. Prior to the expiration of the initial ten-year period, the  
19 superior court may extend the criminal judgment an additional ten years  
20 for payment of legal financial obligations including crime victims'  
21 assessments. All other legal financial obligations for an offense  
22 committed on or after July 1, 2000, may be enforced at any time the  
23 offender remains under the court's jurisdiction. For an offense  
24 committed on or after July 1, 2000, the court shall retain jurisdiction  
25 over the offender, for purposes of the offender's compliance with  
26 payment of the legal financial obligations, until the obligation is  
27 completely satisfied, regardless of the statutory maximum for the  
28 crime. The department may only supervise the offender's compliance  
29 with payment of the legal financial obligations during any period in  
30 which the department is authorized to supervise the offender in the  
31 community under RCW 9.94A.728, 9.94A.501, or in which the offender is  
32 confined in a state correctional institution or a correctional facility  
33 pursuant to a transfer agreement with the department, and the  
34 department shall supervise the offender's compliance during any such  
35 period. The department is not responsible for supervision of the  
36 offender during any subsequent period of time the offender remains  
37 under the court's jurisdiction. The county clerk is authorized to

1 collect unpaid legal financial obligations at any time the offender  
2 remains under the jurisdiction of the court for purposes of his or her  
3 legal financial obligations.

4 (5) In order to assist the court in setting a monthly sum that the  
5 offender must pay during the period of supervision, the offender is  
6 required to report to the department for purposes of preparing a  
7 recommendation to the court. When reporting, the offender is required,  
8 under oath, to respond truthfully and honestly to all questions  
9 concerning present, past, and future earning capabilities and the  
10 location and nature of all property or financial assets. The offender  
11 is further required to bring all documents requested by the department.

12 (6) After completing the investigation, the department shall make  
13 a report to the court on the amount of the monthly payment that the  
14 offender should be required to make towards a satisfied legal financial  
15 obligation.

16 (7)(a) During the period of supervision, the department may make a  
17 recommendation to the court that the offender's monthly payment  
18 schedule be modified so as to reflect a change in financial  
19 circumstances. If the department sets the monthly payment amount, the  
20 department may modify the monthly payment amount without the matter  
21 being returned to the court. During the period of supervision, the  
22 department may require the offender to report to the department for the  
23 purposes of reviewing the appropriateness of the collection schedule  
24 for the legal financial obligation. During this reporting, the  
25 offender is required under oath to respond truthfully and honestly to  
26 all questions concerning earning capabilities and the location and  
27 nature of all property or financial assets. The offender shall bring  
28 all documents requested by the department in order to prepare the  
29 collection schedule.

30 (b) Subsequent to any period of supervision, or if the department  
31 is not authorized to supervise the offender in the community, the  
32 county clerk may make a recommendation to the court that the offender's  
33 monthly payment schedule be modified so as to reflect a change in  
34 financial circumstances. If the county clerk sets the monthly payment  
35 amount, the clerk may modify the monthly payment amount without the  
36 matter being returned to the court. During the period of repayment,  
37 the county clerk may require the offender to report to the clerk for  
38 the purpose of reviewing the appropriateness of the collection schedule

1 for the legal financial obligation. During this reporting, the  
2 offender is required under oath to respond truthfully and honestly to  
3 all questions concerning earning capabilities and the location and  
4 nature of all property or financial assets. The offender shall bring  
5 all documents requested by the county clerk in order to prepare the  
6 collection schedule.

7 (8) After the judgment and sentence or payment order is entered,  
8 the department is authorized, for any period of supervision, to collect  
9 the legal financial obligation from the offender. Subsequent to any  
10 period of supervision or, if the department is not authorized to  
11 supervise the offender in the community, the county clerk is authorized  
12 to collect unpaid legal financial obligations from the offender. Any  
13 amount collected by the department shall be remitted daily to the  
14 county clerk for the purpose of disbursements. The department and the  
15 county clerks are authorized, but not required, to accept credit cards  
16 as payment for a legal financial obligation, and any costs incurred  
17 related to accepting credit card payments shall be the responsibility  
18 of the offender.

19 (9) The department or any obligee of the legal financial obligation  
20 may seek a mandatory wage assignment for the purposes of obtaining  
21 satisfaction for the legal financial obligation pursuant to RCW  
22 9.94A.7701. Any party obtaining a wage assignment shall notify the  
23 county clerk. The county clerks shall notify the department, or the  
24 administrative office of the courts, whichever is providing the monthly  
25 billing for the offender.

26 (10) The requirement that the offender pay a monthly sum towards a  
27 legal financial obligation constitutes a condition or requirement of a  
28 sentence and the offender is subject to the penalties for noncompliance  
29 as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

30 (11)(a) Until January 1, 2004, the department shall mail  
31 individualized monthly billings to the address known by the department  
32 for each offender with an unsatisfied legal financial obligation.

33 (b) Beginning January 1, 2004, the administrative office of the  
34 courts shall mail individualized monthly billings to the address known  
35 by the office for each offender with an unsatisfied legal financial  
36 obligation.

37 (c) The billing shall direct payments, other than outstanding cost  
38 of supervision assessments under RCW 9.94A.780, parole assessments

1 under RCW 72.04A.120, and cost of probation assessments under RCW  
2 9.95.214, to the county clerk, and cost of supervision, parole, or  
3 probation assessments to the department.

4 (d) The county clerk shall provide the administrative office of the  
5 courts with notice of payments by such offenders no less frequently  
6 than weekly.

7 (e) The county clerks, the administrative office of the courts, and  
8 the department shall maintain agreements to implement this subsection.

9 (12) The department shall arrange for the collection of unpaid  
10 legal financial obligations during any period of supervision in the  
11 community through the county clerk. The department shall either  
12 collect unpaid legal financial obligations or arrange for collections  
13 through another entity if the clerk does not assume responsibility for  
14 collection pursuant to subsection (4) of this section. The costs for  
15 collection services shall be paid by the offender.

16 (13) Nothing in this chapter makes the department, the state, the  
17 counties, or any state or county employees, agents, or other persons  
18 acting on their behalf liable under any circumstances for the payment  
19 of these legal financial obligations or for the acts of any offender  
20 who is no longer, or was not, subject to supervision by the department  
21 for a term of community custody, community placement, or community  
22 supervision, and who remains under the jurisdiction of the court for  
23 payment of legal financial obligations.

24 **Sec. 2.** RCW 10.01.160 and 1995 c 221 s 1 are each amended to read  
25 as follows:

26 (1) The court may require a defendant to pay costs. Costs may be  
27 imposed only upon a convicted defendant, except for costs imposed upon  
28 a defendant's entry into a deferred prosecution program or costs  
29 imposed upon a defendant for preparing and serving a warrant for  
30 failure to appear.

31 (2) Costs shall be limited to expenses specially incurred by the  
32 state in prosecuting the defendant or in administering the deferred  
33 prosecution program under chapter 10.05 RCW. They cannot include  
34 expenses inherent in providing a constitutionally guaranteed jury trial  
35 or expenditures in connection with the maintenance and operation of  
36 government agencies that must be made by the public irrespective of  
37 specific violations of law. Expenses incurred for serving of warrants

1 for failure to appear and jury fees under RCW 10.46.190 may be included  
2 in costs the court may require a defendant to pay. Costs for  
3 administering a deferred prosecution may not exceed one hundred fifty  
4 dollars. Costs for preparing and serving a warrant for failure to  
5 appear may not exceed one hundred dollars. Costs of incarceration  
6 imposed on a defendant convicted of a misdemeanor or a gross  
7 misdemeanor may not exceed ((fifty dollars per day)) the actual cost of  
8 incarceration. In no case may the court require the offender to pay  
9 more than one hundred dollars per day for the cost of incarceration.  
10 Payment of other court-ordered financial obligations, including all  
11 legal financial obligations and costs of supervision take precedence  
12 over the payment of the cost of incarceration ordered by the court.  
13 All funds received from defendants for the cost of incarceration in the  
14 county or city jail must be remitted for criminal justice purposes to  
15 the county or city that is responsible for the defendant's jail costs.  
16 Costs imposed constitute a judgment against a defendant and survive a  
17 dismissal of the underlying action against the defendant. However, if  
18 the defendant is acquitted on the underlying action, the costs for  
19 preparing and serving a warrant for failure to appear do not survive  
20 the acquittal, and the judgment that such costs would otherwise  
21 constitute shall be vacated.

22 (3) The court shall not sentence a defendant to pay costs unless  
23 the defendant is or will be able to pay them. In determining the  
24 amount and method of payment of costs, the court shall take account of  
25 the financial resources of the defendant and the nature of the burden  
26 that payment of costs will impose.

27 (4) A defendant who has been sentenced to pay costs and who is not  
28 in contumacious default in the payment thereof may at any time petition  
29 the sentencing court for remission of the payment of costs or of any  
30 unpaid portion thereof. If it appears to the satisfaction of the court  
31 that payment of the amount due will impose manifest hardship on the  
32 defendant or the defendant's immediate family, the court may remit all  
33 or part of the amount due in costs, or modify the method of payment  
34 under RCW 10.01.170.

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